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Museum, and The Captain Michael King Smith

Educational Institute

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re:

THE FALLS EVENT CENTER LLC; THE FALLS AT GILBERT, LLC; THE FALLS AT MCMINNVILLE, LLC; THE FALLS AT ST. GEORGE, LLC; THE FALLS AT FRESNO, LLC; THE FALLS AT CLOVIS, LLC; THE FALLS OF LITTLETON, LLC; THE FALLS AT CUTTEN ROAD, LLC; THE FALLS AT STONE OAK PARKWAY, LLC; THE FALLS AT BEAVERTON, LLC; AND THE FALLS AT ROSEVILLE, LLC;

Consolidated Debtors.

Bankr. Case Nos.

18-25116; 18-25419; 18-25492; 18-26653;
18-27713; 18-28140; and 18-27111

(Substantively Consolidated under Case No.
18-25116)

Chapter 11

The Honorable R. Kimball Mosier

In re:

THE FALLS AT MCMINNVILLE, LLC;

Debtor.

Bankr. Case No. 18-25492

Chapter 11

The Honorable R. Kimball Mosier

**EX PARTE MOTION TO SHORTEN TIME AND SET HEARING AND OBJECTION
DEADLINE ON MOTION FOR ORDER, PURSUANT TO SECTION 363(e) OF THE
BANKRUPTCY CODE AND RULES 4001, 9013, AND 9014 OF THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE, GRANTING THE EVERGREEN
AVIATION & SPACE MUSEUM AND THE CAPTAIN MICHAEL KING SMITH
EDUCATIONAL INSTITUTE ADEQUATE PROTECTION**

Pursuant to Local Rules 9006-1(a) and 9013-1(m), Evergreen Aviation & Space Museum and The Captain Michael King Smith Educational Institute (collectively, “**Museum**”) respectfully moves (“**Motion**”) the Court, ex parte, for entry of an order shortening time for filing a notice of a hearing, and setting an expedited objection deadline on, the Museum’s *Motion For Order, Pursuant To Section 363(e) Of The Bankruptcy Code And Rules 4001, 9013, And 9014 Of The Federal Rules Of Bankruptcy Procedure, Granting Evergreen Aviation & Space Museum And The Captain Michael King Smith Educational Institute Adequate Protection* (“**Motion For Adequate Protection**”).

In support of such request, the Museum respectfully states as follows:

1. On October 11, 2019, the chapter 11 Trustee (“**Trustee**”) of the above-captioned substantively consolidated Debtors (“**Consolidated Debtors**”) filed his *Motion To Sell Property Out Of The Ordinary Course Of Business, Free And Clear Of All Interests And Subject To Higher And Better Offers, To McMinnville Properties, LLC, Pursuant to 11 U.S.C. § 363(b), (f), And (m); Approval Of Sale Procedures, Including A Break-up Fee; And Waiver Of The Stay Set Forth In Fed. R. Bankr. P. 6004(h)* (“**Sale Motion**”). Dkt. No. 573, Case No. 18-25116 (“**TFEC Dkt.**”).

2. Also on October 11, 2019, the Trustee filed his *Motion To Approve Settlement Agreement Pursuant To Federal Rule of Bankruptcy Procedure 9019* (“**Settlement Motion**”) seeking approval of the Museum Settlement.¹ TFEC Dkt. No. 571.

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Sale Motion.

3. On October 15, 2019, the Trustee filed notices of hearing on the Sale Motion and Settlement Motion setting a hearing for November 5, 2019, at 11:00 a.m. prevailing Mountain Time. TFEC Dkt. Nos. 578, 580.

4. The Museum's counsel contacted the Court's scheduling line on October 30, 2019 and requested that the Motion For Adequate Protection be set for hearing on November 5, 2019, at 11:00 a.m. The clerk indicated that setting the Motion For Adequate Protection for hearing on November 5 would not be possible, and the earliest available date for hearing was November 12, 2019 at 3:00 p.m. Thus, by this Motion, the Museum seeks to set its Motion For Adequate Protection for hearing on November 12, 2019. To the extent the Trustee and the Museum are able to resolve the concerns raised in the Museum's Motion For Adequate Protection prior to November 12, 2019, the hearing may not be necessary.

5. Local Rule 9006-1(a) provides that the Court may alter the time period generally required to file and serve a motion prior to hearing, providing that "[a] motion for an order fixing a different period may, for cause shown, be made to the court on an ex parte basis." Local Rule 9013-1(m), also confirms that "[a] party may file a motion to shorten time for expedited hearing, which may be granted ex parte for cause."

6. The Museum's Motion For Adequate Protection is necessary due to the Sale Motion's request for relief that grants the Trustee authority to sell the Property free and clear of all "interests" to any good faith purchaser ("**Alternate Purchaser**") including but not limited to a prospective purchaser who submits a bid by the bid deadline, and irrespective of whether an Alternate Purchaser supports the Global Settlement Term Sheet attached as Exhibit A to the Settlement Motion. In fact, if McMinnville Properties, LLC ("**Stalking Horse**") is identified at

the hearing to approve the Sale Motion as the purchaser of the Property and yet subsequently fails to consummate the Purchase and Sale Agreement and First Amendment to the Purchase and Sale Agreement, attached to the Sale Motion as Exhibits 1 and 2 (collectively, the “PSA”), the Sale Motion authorizes the Trustee to sell the Property to an Alternate Purchaser without having to return to this Court. *See* Notice of Sale Motion, dkt. no. 580 (“If for whatever reason the sale to the Buyer does not close, ***the Trustee seeks authorization to sell the Property to any other good faith purchaser who offers at least the Purchase Price for the Property.***”) (emphasis added.) Because the Museum is not willing to consent to a “free and clear” sale to an Alternate Purchaser who is, at this time, unknown, the Museum’s Motion For Adequate Protection is necessary.

7. Cause exists to expedite consideration of the Motion For Adequate Protection so that argument regarding the Museum’s rights in the Property that is the subject of the Sale Motion can be heard and adjudicated as contemporaneously as possible with the Court’s consideration of the Sale Motion and the Settlement Motion on November 5, 2019. It is vital that the Museum’s request for adequate protection be granted by this Court in connection with the entry of an order approving the Sale Motion.

8. Accordingly, the Museum submits it would be in the best interest of the above-captioned Consolidated Debtors, their creditors, and all other parties in interest to hold the hearing on the Motion For Adequate Protection on Tuesday, November 12, 2019, at 3:00 p.m., and to set an objection deadline on such motion for Monday, November 11, 2019 at 12:00 p.m., Mountain Standard Time.

9. To provide sufficient notice, the Museum will provide a copy of the Motion For Adequate Protection and the notice of hearing and objection deadline on the same to the US Trustee

and to counsel for the parties who have appeared in the case by electronic notice through CM/ECF, and will also provide a copy of the Motion For Adequate Protection and notice of the hearing and objection deadline to all creditors and parties in interest appearing on the mailing matrix by first class US Mail, postage prepaid, sent out on Wednesday, October 30, 2019.

For the reasons discussed above, the Museum respectfully requests that the Court enter an order shortening the notice requirements for the Motion For Adequate Protection, set a hearing on that motion for Tuesday, November 12, 2019, at 3:00 p.m. and an objection deadline of Monday, November 11, 2019 at 12:00 p.m., and grant such further relief as the Court deems necessary and equitable under the circumstances.

DATED: October 30, 2019

STOEL RIVES LLP

/s/ Oren B. Haker

Oren B. Haker (*admitted pro hac vice*)

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Museum, and The Captain Michael King Smith
Educational Institute*

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I filed a true and correct copy of the foregoing **EX PARTE MOTION TO SHORTEN TIME AND SET HEARING AND OBJECTION DEADLINE ON MOTION FOR ORDER, PURSUANT TO SECTION 363(e) OF THE BANKRUPTCY CODE AND RULES 4001, 9013, AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, GRANTING THE EVERGREEN AVIATION & SPACE MUSEUM AND THE CAPTAIN MICHAEL KING SMITH EDUCATIONAL INSTITUTE ADEQUATE PROTECTION** with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF Users.

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I further certify the below parties who are not on the list to receive email notice/service for this case were served by U.S. First Class mail on the date listed below:

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DATED: October 30, 2019

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